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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Truth-in-Billing	)	CC Docket No. 98-170
and Billing Format	)	

BELL ATLANTIC MOBILE COMMENTS ON FURTHER NOTICE

Bell Atlantic Mobile, Inc. (BAM), submits these comments in opposition to the Further Notice in this proceeding, which takes up again whether to impose truth-in-billing requirements on CMRS providers, and proposes to specify the content of line items for certain charges on CMRS and other carriers' bills.[1]

Summary. The Further Notice follows the unnecessary and unjustified path of threatening still more regulation of the wireless industry. The original Notice in this proceeding sought comment on requirements for the bills of wireless carriers. The record in response to that Notice supplied no factual basis to impose any new billing requirements on wireless carriers. To the contrary, it showed that the rules being considered could confuse wireless customers and increase carriers' costs, and that CMRS carriers are driven by competition to ensure that customers are satisfied

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1 Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, FCC 99-72 (released May 11, 1999).

with their bills. The First Report acknowledged this record, agreed that it supplied no basis for imposing detailed CMRS truth-in-billing rules, and thus exempted wireless providers from most of the new rules.

The Further Notice, however, inexplicably opens this matter all over again. It asks for the same information that is already in the record. Its pursuit of further regulation of CMRS, in the absence of any evidence that anything has changed since the original record was developed, forces the Commission and the parties to spend resources on a matter that should have been closed. Worse, it reflects a willingness to regulate that cannot be reconciled either with Congress' deregulatory paradigm for CMRS, or with many statements of the Commission itself. Last month, Chairman Kennard declared:

> Wireless phone users are riding the wave of a tremendous buyers' market brought about by thriving competition in the wireless telecom field. Consumers have more choices than ever . . . . Wireless is working as it should work – governed by the marketplace and not by regulation – and it is thriving. Common sense regulation by the FCC and Congress have helped foster the competitive nature of this industry. In a competitive marketplace excessive regulation can only handcuff the invisible hand, and wireless is a case study of achieving success through market forces instead of government.[2]

The Further Notice's consideration of new CMRS regulation is plainly not "common sense." The many benefits to consumers that the Chairman proclaims have been achieved without rules regulating wireless carrier's bills. They have

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[2] Press Statement of Chairman William E. Kennard on "Wireless Day," June 10, 1999.

occurred without even more intrusive rules that would dictate to wireless carries the words they can and cannot use in communicating to their customers. The just-released annual report on CMRS competition contained no evidence or discussion of any consumer-related concerns about billing by wireless carriers whatsoever.[3] In the face of these facts, the Further Notice's proposal for more regulation that would "handcuff the invisible hand" is mystifying.[4]

Third-Party Charges. The First Report adopted a new rule, Section 64.2001(a)(2), that regulates the disclosure and organization of billing information about charges from third-party providers, but the rule does not apply to wireless providers. The Further Notice asks whether it should be extended to CMRS. It should not be. The existing record already showed that slamming, cramming and other issues involving third-party charges that led to these rules are not problems

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3 Annual Report and Analysis of Competitive Conditions With Respect to Commercial Mobile Services, Fourth Report (released June 24, 1999).

4 The Further Notice invites commenters to "address the applicability of a section 10 forbearance analysis" to new CMRS billing rules. Id. at ¶ 68. This is clearly inappropriate. Forbearance reevaluates the validity of pre-existing requirements by applying standards that, when met, require the Commission to cease enforcement. It is not a substitute for developing the requisite record to impose new rules in the first place. Here, there is no such record.

To the extent the Commission suggests that it is wireless providers' burden to make a forbearance case in order not to be subjected to new billing rules, that suggestion is unlawful. It would misuse and turn on its head the clear deregulatory mandate of Section 10, by transforming it into a process for imposing regulation. See Policy and Rules Concerning the Interstate Interexchange Marketplace, Memorandum Opinion and Order, FCC 98-347, Dissenting Statement of Commissioner Michael K. Powell, January 28, 1998.

in the wireless industry.[5] The state utility commissions, state attorneys general and consumer groups which commented did not identify slamming and cramming as a problem faced by wireless customers.[6] While the Further Notice asks for information about CMRS third-party billing, the record already contains ample information on this matter. Nothing has changed in the months since that record was developed to warrant reconsidering the Commission's correct decision not to impose third-party billing rules on wireless providers.

Description of Charges. The First Report also did not apply the rule regulating the description of charges, Section 64.2001(b), to CMRS providers. This decision was correct and should not be changed. The existing record showed no evidence of any harm to wireless consumers resulting from CMRS carrier billing practices or the descriptions of charges. It showed to the contrary that competition for customers is driving wireless carriers to ensure that their customers receive accurate and complete explanations of charges.[7] Complete disclosure is in wireless

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5 E.g., Comments of Nextel Communications, Inc. at 8; Comments of Primeco Personal Communications, L.P.., at 5; Comments of Rural Cellular Coalition at 2; Comments of BAM At 6-7.

6 E.g., Comments of the National Association of Attorneys General; Comments of the Maine Public Utilities Commission; Comments of Billing Reform Taskforce.

7 BAM previously submitted a declaration of its Vice President of Information Systems detailing BAM's continual efforts to enhance and improve its billing in response to customer input and to provide information about all charges. He explained how competitive pressures drive BAM to "market test" its bills and monitor customer satisfaction constantly. BAM Reply Comments, December 16, 1998, Declaration of Roger Gurnani. See also Comments of

(continued...)

carriers' economic interest, and there is no evidence to show it has not occurred. Customers who are dissatisfied with a wireless provider's billing practices have ample competing alternatives, and documentation of high "churn" in the industry supplies ample evidence that customers do in fact frequently change providers.[8] There is no evidence that could warrant reversing the Commission's initial decision not to impose unnecessary requirements.

Deniable Charges. The Further Notice observes that the new billing rule regulating disclosure of "deniable" and "nondeniable" charges, Section 64.2001(c), "may have no relevance, and add no benefit, to consumers' CMRS bills." Id. at ¶ 70. This is correct. The deniable vs. nondeniable charge issue raised in this proceeding was presented solely as a landline issue. There was and is no reason for considering extension of this rule to wireless providers' bills.

CMRS Line-Item Labels. The Further Notice also declares that it will sweep CMRS providers within any requirements for the content of line items on

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PCIA at 7, Comments of AirTouch Communications at 2; Reply Comments of AT&T at 14 ("There is no need to graft onto wireless services additional regulatory requirements that are based on the experience of wireline customers"); CTIA Reply Comments (no record evidence of CMRS billing problems); PCIA Reply Comments (documenting costs of new billing rules).

8 See Fourth Competition Report; supra n. 3 (documenting wireless churn); Press Statement of Chairman Kennard, supra n. 2: "The mobile telephone industry is well on its way towards completing its transformation from a duopoly to a competitive marketplace. Where there were once only two providers, there are now communities with five, six and even seven carriers trying to sell their services."

bills that it now adopts: "We also intend to require CMRS carriers to comply with standardized labels for charges resulting from Federal regulatory action, if and when such requirements are adopted." Id. at ¶ 18. This makes no more sense than any other new billing rules for CMRS.

First, the Commission has already adopted the "core principle" that "bills should contain full and non-misleading descriptions of the service charges that appear therein." Further Notice at ¶ 37. And, as it has declared, "Unjust or unreasonable line-item charges are also subject to challenge pursuant to Section 201(b) of the Act." Further Notice at ¶ 58. Given carriers' existing obligations, the many available remedies to enforce them, and the lack of evidence of any customer confusion or harm resulting from wireless carriers' imposition of charges flowing from federal assessments, there is no justification for dictating the content of line items on a bill.[9]

Second, concerns of consumer confusion which the Commission uses to justify its proposal for specific labels were based on IXC, not wireless, billing practices. The Commission criticizes the practice of certain IXCs to bill for "universal service"

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9 The lack of any record justification for dictating the content of line items on carrier bills is reason enough to refrain from doing so. The obvious First Amendment concerns that result from Government-imposed requirements as to what businesses must (and must not) say to their customers about charges that result from Government-imposed fees clearly warn against taking this action. The First Amendment problems will only lead to protracted litigation that would consume the efforts of the Commission and the parties without achieving any tangible benefit.

costs even though IXCs' access charges have been reduced to offset such obligations. Further Notice at ¶ 51. But this is an IXC issue that establishes no basis to impose new wireless regulation. Given the lack of documented problems with wireless carriers' bills, there is no basis for extrapolating any justification the Commission believes exists for standardizing line items on IXC bills to wireless bills.

Third, to the extent the Commission's motive for requiring standard labels is that some carriers have told customers that they are required to collect the specific charge, this concern is related not to a label on the bill, but to how carriers describe the charge in any additional information that they supply – and the Commission declines to dictate the terms of that description. Instead, it states, "Carriers should have broad discretion in fashioning their additional descriptions, provided only that they are factually accurate and non-misleading." Further Notice at ¶ 56. There is thus no connection between the proposed standard label requirement and the concern the Commission identifies.

Fourth, dictating standard labels would also undercut the clear benefits to competition from CMRS carriers' efforts to differentiate their offerings. Billing is integral to a wireless carrier's overall relationship with its customers, and is a key area in which wireless carriers differentiate themselves. Carriers select and change billing practices to attract and retain customers, and often select different approaches. One may decide that detailing separate charges may be most effective, while its competitor may use a shorter bill with consolidated line items as a way to distinguish itself in the marketplace.

BAM, for example, invested extensive efforts to design bill inserts as well as statements on monthly bills which explain to customers the charge BAM decided to add because of its increased costs resulting from a growing number of government assessments. BAM believes that a single charge is the best way to inform its customers of these assessments. It has had this consolidated charge in place for many months and has continued with this approach because it has found that customers like this simple bill format.[10] The Commission's inflexible proposal would, however, preclude this consolidated approach even though it would serve customers as well or better. In fact, parties such as the California Public Utilities Commission argued that a "lump sum" line item is preferable to a detailed list of separate charges. Further Notice at ¶ 55. Even the Commission acknowledges, "We recognize that consumer may benefit from a simplified, total charge approach." Id. Why, then, prohibit it?

Product differentiation is a well-established aspect of a competitive market. Requiring standardized labels directly undercuts it and thus disserves competition.

Conclusion. The Further Notice offers no factual grounds for further regulating the billing practices of CMRS providers. The existing record shows that new requirements will serve no purpose, and nothing has changed that could conceivably warrant reopening that issue. The Commission should terminate its consideration of further billing rules. If in the future, a specific problem arises that

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10 See Declaration of Roger Gurnani, supra n. 7.

requires government intervention, the Commission can take further action at that time that is targeted at that problem. But broad regulation today, in the absence of any such problem, is absolutely unwarranted.

Respectfully submitted,

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